IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 57 OF 2002

CAPTAIN RADHA ASHISH SHARMA)
presently residing at 24/7 New)
Golibar Maidan, Pune 411 001) .. APPELLANT

VERSUS

MAJOR ASHISH SHARMA)
residing at 24/7, New Golibar)
Maidan, Near C.D.A.,)
PUNE 411 001) .. RESPONDENT

Mrs. Manjula Rao for appellant
Mr. Surel S. Shah for respondent

CORAM:-SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

JUDGMENT RESERVED ON: 21/2/2006
JUDGMENT DELIVERED ON: 10/3/2006

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. The appellant has challenged in this appeal judgment and order dated 11/4/2004 passed by the Family Court at Pune in Petition A. No. 905 of 2000. By the impugned order the marriage

solemnised between the petitioner and the respondent on 9th December, 1994, is dissolved by a decree of dissolution on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, from the date of the order.

2. It is necessary to give a gist of the facts to understand the nature of the matrimonial discord.

3. The appellant is the wife and the respondent is the husband. For the sake of convenience, we shall refer to them as the appellant and the respondent.

4. The appellant is a Tamilian. She is M.Sc. in nursing. The respondent is a Punjabi. He is a doctor by profession. His parents are staying at Jalandar. His mother is M.Sc., M.Phil. At the relevant time she was serving as a professor of Botany. The respondent’s father is M.Sc. He was working as a professor of Zoology.

5. Both, the appellant and the respondent were serving at Jabalpur in the army. They fell in love and got married on 9th September, 1994 at Chennai as per Hindu rites. This marriage was not liked by the respondent’s relatives. They did not attend

the marriage.

6. The respondent was posted at Command Hospital, Pune, in December, 1998. The appellant came to be posted at Armed Forces Medical College, Pune, as a lecturer . Both of them were staying together in the accommodation allotted to the respondent. Upto July, 1999 the matrimonial life of the appellant and the respondent was peaceful. Thereafter the relations were strained to such an extent that on 21/12/2000 the respondent filed petition for divorce or judicial separation on the ground of cruelty in the Family Court at Pune.

7. In the petition the respondent set out several instances which led to his filing of the petition. He contended that the mother of the appellant and his parents stayed with him and the appellant for sometime in Pune in the year 1999. The appellant at the instance of her mother started misbehaving with his parents. She used to use harsh and foul language and used to pass sarcastic remarks against them. She wanted the respondent to ask his parents to leave Pune and when he refused to do so, she started behaving rudely with him. Because of her bad behaviour the respondent’s parents had to leave

Pune. The appellant threatened the respondent that, if her in-laws come again she would kill herself.

8. The respondent further contended that when in September, 1999 his mother visited Pune, again the appellant created a scene and told him that if his mother does not leave Pune she would cut her wrist and end her life. The respondent refused to ask his mother to leave Pune. The appellant then cut her wrist with a blade. The respondent then called Major Rakesh Datta for help. He nursed the appellant. Just to pacify the appellant, he asked his mother to tender apology. On account of this incident his mother left Pune and decided not to come to Pune again. According to the respondent whenever he used to receive telephone calls from his parents the appellant used to threaten him and tell him that she would jump from balcony and kill herself. She made an attempt to kill herself in the month of May 2000 by climbing on the railing of the balcony but the respondent pulled her back and prevented the mishap.

9. It is the case of the respondent that the appellant used to defame him amongst his senior

colleagues, friends and relatives alleging that he had used her physically and financially. She stopped talking to him and refused to share bed with him. He was forced to sleep in another room. She denied him normal conjugal rights. Thus though they lived under the same roof they used to sleep in different rooms, used separate household articles and equipments and mess separately. According to the respondent the behaviour of the appellant caused tremendous pain, sufferings, mental torture and agony to him. He contended that because of difference in temparaments, nature and thinking and likes and dislikes it was not possible for both of them to live together. According to the respondent the marriage between him and the appellant has irretrievably broken down and there is no possibility of their re-union. He, therefore, prayed for a decree of divorce or in the alternative a decree of judicial separation.

10. The appellant denied the respondent's allegations. According to her the parents of the respondent had initially cut off their relations with the respondent by saying that he was dead for them as he had married the appellant against their wishes and that he would not inherit a penny from

them. However, both of them had gone to the respondent's parents' house at Jalandar to seek their blessings. Upto July, 1999 their married life was happy. In May 1998, she was posted at Pune and the respondent was to join her in December, 1998 at Pune. In June, 1998 she called her mother from Chennai to set up her house. Her mother gave her several household articles. In March, 1999, her mother returned to Chennai. In June 1999 a Government accommodation was made available to them. In July, 1999 as her mother was ill, with the respondent's permission she was brought to Pune. In July 1999, respondent's parents also came to Pune. The respondent's parents started nagging, defaming and insulting her in front of her mother on petty household affairs. Her mother-in-law was not eating the food prepared by her. When she tried to touch the feet of her mother-in-law while she was leaving for Jalandhar her mother-in-law gave her a kick. After the respondent's parents left Pune the respondent started illtreating the appellant. The respondent was instigated by his parents to do so.

11. The appellant has narrated certain instances indicating alleged cruel behaviour of the

respondent. According to her in October 1999 her mother-in-law purposely cooked fish in the kitchen knowing that the appellant was a pure vegetarian. She was, therefore, sitting in the Varanda. Her mother-in-law came in the Varanda with some sharp object in her hand and purposely dashed it against her wrist resulting in bleeding injury. At that time Major Datta was called. She could not divulge the truth because she did not want to defame the respondent and his mother. Thereafter her mother-in-law left Pune. After this incident she continued to make phone calls to the respondent and instigate him.

12. In January and February 2000 there was slight improvement in their relationship. They worked together for their college. Thereafter the respondent’s misbehaviour increased. He was not contributing for the maintenance of the house. He stopped eating food prepared by her. He started eating food in the mess. He told the appellant to leave the house. In June 2000 she was hospitalised on account of some illness but the respondent did not attend to her. In September, 2000 she requested the respondent’s parents to settle their marital dispute but the respondent’s parents abused

her and told her not to come to Jalandar. She did not make any complaint for fear of spoiling the respondent's service record. On the advice of her friends she had gone to Botswana to visit her brother as she thought that this would give sometime for both of them for introspection and their relations would improve. On her return she noticed that the relationship had worsened. The appellant prayed that the respondent should not be allowed to take advantage of his own wrong. She prayed for dismissal of the divorce petition. She made a counterclaim for restitution of conjugal rights.

13. The appellant examined herself and one Ajitha Nair, who is serving as lecturer in Armed Forces Medical College, Pune in support of her case. In support of his case the respondent examined himself, his mother Mrs. Jaswant Sharma and Mr. Ramnathan Vasanth Kumar who is serving as a Doctor in Indian Navy at Chilka in Orissa.

14. After perusing the evidence on record the Family Court came to a conclusion that the appellant has treated the respondent with cruelty and hence the respondent is entitled to a decree of

divorce. The Family Court thus dissolved the marriage between the appellant and the respondent by a decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act from the date of its order. The said judgment and order is challenged in this appeal.

15. We have heard at some length Mrs. Manjula Rao learned counsel for the appellant and Mr. Surel Shah, learned counsel for the respondent. With the assistance of the learned counsel we have gone through the record.

16. Mrs. Rao, learned counsel for the appellant contended that the impugned judgment and order is perverse and deserves to be set aside. She submitted that the respondent has failed to make out a case of cruelty allegedly meted out by the appellant to him. She submitted that the instances to which reference is made by the respondent in his evidence are trivial in nature. Such instances are common occurrences in every marriage. They could be well described as normal wear and tear of married life. Assuming that the said instances are proved they could never be described as instances of cruelty. The learned counsel urged that

admittedly till July, 1999 all was well with the appellant and the respondent. It is only when the parents of the respondent came to stay with the appellant and the respondent that the trouble began.

17. Mrs. Rao pointed out that the evidence on record clearly indicates that there was uncalled for interference by the parents of the respondent in the married life of the appellant and the respondent. Mrs. Rao pointed out that it is an admitted position that parents of the respondent were not in favour of marriage of the respondent with the appellant, it being an inter-caste marriage and, therefore, they instigated the respondent to ill-treat the appellant. They were bent upon causing rift between the two. Mrs. Rao further pointed out that the story that the appellant threatened that she would commit suicide to put the respondent in difficulty is untrue. It is a fabricated story not supported by evidence. The learned counsel further urged that there is clear evidence to establish that the respondent's mother gradually created animosity between the appellant and the respondent. The food cooked by the appellant was not even eaten by the respondent

and his family. At the instigation of the parents the respondent started eating in the mess. He started sleeping in a separate room and did not even use the household articles. The learned counsel contended that the marital discord is the creation of the respondent's parents and the appellant cannot be accused of causing any cruelty to the respondent. She, therefore, submitted that the petition ought to be dismissed.

18. Mr. Shah, learned counsel for the respondent on the other hand submitted that the case of mental cruelty is made out by the respondent and hence no interference is necessary with the impugned order. Mr. Shah contended that the evidence on record clearly indicates that the appellant persisted in illtreating the respondent and his parents. She insulted the respondent's parents and made it impossible for them to stay in their matrimonial home at Pune. She went to the extent of cutting her wrist soas to create a sense of insecurity in the mind of the respondent. The respondent was constantly under the fear that the appellant may translate her threats of suicide into action and bring him and his family in trouble.

19. The learned counsel relied on the judgment of the Supreme Court in **A Jaychandra v. Aneel Kaur, 2005 (5) ALL MR (S.C.) 313** where the Supreme Court has stated what is meant by cruelty in the context of Section 13 of the said Act. He pointed out that if a spouse causes reasonable apprehension in the mind of the other spouse that it would be harmful or injurious to live with him or her that would amount to cruelty. He submitted that the threats of suicide given by the appellant created an apprehension in the mind of the respondent that it would be harmful or injurious to live with the appellant and in the light of the judgment of the Supreme Court in **A Jaychandra's case (supra)** it must be held that this conduct of the appellant amounts to mental cruelty. The learned counsel urged that apart from the incident of the appellant trying to cut her wrist the respondent has proved several other instances which fit in the definition of cruelty within the meaning of Section 13 of the said Act. The learned counsel submitted that besides it is an admitted fact that from July 1999 till today there is no conjugal relationship between the appellant and the respondent, The marriage has irretrievably broken down. In the circumstances this court should not interfere with

the impugned judgment and order. Mr. Shah also relied on the judgments of this court in **Harvindersingh v. Mrs. Charanjit Kaur 2000(1) MLJ 429**, **Nilima Kishore v. Kishore Mhaske 2002(3) MLJ 872** and **Vijaykumar Bhate v. Neela Bhate, 11 (2001) DMC 64**.

20. Since the respondent has sought to dissolve the marriage on the ground of cruelty, it is necessary to see what the expression cruelty means. It is also necessary to see whether while judging whether there is cruelty or not, the court has to insist on proof beyond shadow of doubt. In this connection it would be advantageous to refer to the observations of the Supreme Court in **A. Jaychandra's case (supra)** which read thus:-

> "To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach

> the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce."

21. In this judgment the Supreme Court has also held that if from the conduct of a spouse cruelty is established and/or inference can be legitimately drawn that the treatment of a spouse is such that

it causes an apprehension in the mind of the other spouse about his or her mental welfare it would amount to mental cruelty. Cruelty need not be physical. It is further observed that in delicate human relationship like matrimony one has to see the probabilities of the case and the concept of proof beyond shadow of doubt is to be applied to the criminal trials and not to matters of such delicate personal relationship as those of husband and wife. It is further observed that in matrimonial matters one has to see what are the probabilities in a case and legal cruelty has to be found out not merely as a matter of fact but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.

22. The present case will have to be examined against the background of these observations of the Supreme Court. Proof beyond reasonable doubt is not what is required in the cases where personal relationship of husband and wife is involved and allegation is of mental cruelty. If strong case is made out which if examined on the touchstone of probabilities appears to be genuine cruelty must be held to be proved.

23. In this case the respondent has stated that when his parents stayed with him at Pune in July 1999 the appellant misbehaved with them. She used to hurl abusive words at them. According to him she was not amenable to reason. Whenever he tried to pacify her she refused to listen to him. Because of her misbehaviour his parents who had come to stay with them in Pune, in July, 1999 left Pune within a short time. In September, 1999 his mother visited Pune for about eight days. According to the respondent at that time the appellant insisted that his mother should leave the house or else she would kill herself by cutting her wrist. On 8th September, 1999 at about 9 p.m. she in fact cut her wrist. According to the respondent he tried to press the wound and stop bleeding. Major Datta was called to help him. Bleeding was stopped because of the pressure exerted by him on the wound. Because of this incident he was required to keep awake whole night apprehending that the appellant would commit similar acts again. In order to avoid any further problems, though his mother was not at fault, he asked his mother to apologise to the appellant. This incident caused great mental trauma to him. He was not able to concentrate on his studies. Even after this

incident his wife continued to misbehave. His mother left Pune, after this incident informing the respondent that she would not visit Pune again as that would cause mental disharmony between him and the appellant. The appellant persisted in causing mental torture to the respondent. He has further stated that the appellant informed his friends and colleagues that the respondent has physically and financially used her. This caused him great mental pain and agony. He has stated that he did not complain about the appellant for fear of ruining his career and also appellant's career. He has admitted that he was taking meals in the office mess and that there was no conjugal relations between the two after July 1999.

24. The respondent has also examined his mother Jaswant Sharma. Her evidence supports the evidence of the respondent. She has given graphic details as to how the respondent misbehaved with her. She has stated that though initially she and her husband had opposed the marriage on her son's insistence she had consented. A reception was arranged at Jalandar on 3/6/95. According to her she treated the appellant very well and gave her everything as per tradition. However, when she

went to Pune along with her husband in July, 1999 to reside with her son the appellant misbehaved with her and her husband. They had to, therefore, leave Pune. Again in September, 1999 she came to Pune to invite the appellant to Jalandar for ring ceremony of her daughter. The appellant again misbehaved with her. She continuously used abusive words. On 8th September, she cut her wrist at about 8-30 p.m. Her son called Major Datta to help him. Her son stopped the bleeding from the wrist by pressing the injury. Her son asked her to tender apology to the appellant though she had not committed any mistake just to ensure that peace is restored. On the next day she left for Jalandar because her son asked her to go back. Thereafter even though she went to Pune she did not stay with the appellant and the respondent. In her cross-examination Mrs. Sharma has stood firm. She has not deviated from her version in the examination-in-chief.

25. Respondent has also examined Mr. Ramnathan Kumar. Mr. Kumar’s evidence also supports the evidence of the respondent and his mother. It is pertinent to note that Mr. Kumar is also a friend of the appellant and he has deposed that he has stated the truth because the appellant and the

respondent are his friends. He has stated that when at the instance of the respondent he tried to talk to the appellant to settle the dispute, the appellant started using threatening language and told him that the respondent had physically and financially used her. He has stated that from his conversation with the appellant he could gather that the appellant wanted to trouble the respondent and his parents. In the cross-examination of this witness he has reiterated whatever he has stated in the examination-in-chief. It cannot be said that this witness has in any way tried to support the respondent by stating falsehood or by exaggerating the case.

26. The appellant has in her evidence tried to put the blame on the respondent and his family. She particularly targeted her mother-in-law. She has stated that her relations with her husband were good till the respondent’s parents came to stay with them at Pune. According to her the respondent’s parents used to humiliate her. At their instance the respondent used to illtreat her. She has stated that from July, 1999 her husband stopped having any physical relations with her. According to her in September, 1999 in presence of

her mother-in-law her husband slapped her. According to her one day when she was sitting in Varandha at 8-30 p.m. her mother-in-law deliberately brought fish. She started cooking it knowing that the appellant is a pure vegetarian. Because of the smell it was not possible for her to remain in the house. When she was sitting in the Varandha she noticed that some one was standing at the back. When she got up from her seat she came into contact with some sharp object, which resulted in bleeding injury on her wrist. She saw that her mother-in-law was standing there with some instrument in her hand. Her husband pressed her wrist in order to stop the bleeding. He called Major Datta. Her mother-in-law then apologised to her at the instance of her husband. Her mother-in-law then left the house. Thereafter the respondent was all the while in communication with his mother. Her relationship improved to some extent in January/February 2000 and again because of telephonic talks which the respondent had with his mother, the relationship deteriorated. After March, 2000 the respondent stopped taking food in the house. He purchased domestic articles and started using them independently. He did not use any of the articles which were given to the

appellant by her mother. Even when she was hospitalised the respondent never attended to her. She denied that she ever told any colleague of the respondent that the respondent had financially and physically used her.

27. It is pertinent to note that the appellant has admitted that some incident in which her wrist was cut had taken place. She has also admitted that Major Datta was called. Her story that she was sitting in Varandha, that she noticed that her mother-in-law was standing behind her and that her mother-in-law was holding some sharp article which caused bleeding injury to her appears to be untrue. It is improbable that the appellant would allow her mother-in-law to come from behind and cause injury to her. This story is inherently improbable and we are convinced that it is false. According to her it is in September, 1999 when her mother-in-law had come to Pune, that this incident took place and immediately thereafter her mother-in-law left Pune. In her written statement she has stated that her mother-in-law came to Pune in October, 1999 and the incident took place in October, 1999. Therefore, the case made out by her in her written statement that the incident had taken place in October, 1999

is contradictory to her evidence in court. Evidence of the appellant, therefore, does not inspire confidence. Her witness Ajitha Nair does not further her case.

28. Respondent's case that the appellant was threatening him that she would commit suicide, if her parents did not leave Pune and that she cut her wrist is made out by his evidence supported by the evidence of his mother Jaswant Sharma and his friend Ramnath Kumar. On this incident their testimony is consistent. The appellant has admitted the incident but has given a false explanation for it. In our view, the respondent's case that the appellant tried to commit suicide is clearly established.

29. In this connection reference may be made to the judgment of this Court in **Harvindersingh's** case **(supra)** In that case the husband had sought divorce on the ground of cruelty. This court observed that over and above various incidents deposed to by the husband the possible threat of suicide as also the tendency of the wife to hurl abuses at her husband made out a case of cruelty. Even in **Nilima Mhaske's case (supra)** the wife had made attempts to

commit suicide. This court confirmed the family court's finding that the wife was guilty of cruelty. It appears that the appellant by such behaviour wanted to terrorise the respondent so that he would not bring his parents to Pune. Such threats would obviously amount to mental cruelty because they created apprehension in the respondent's mind that it would be injurious to stay with the appellant.

30. From the evidence of the respondent and his mother it is also established that the appellant's general behaviour was also objectionable. The instances narrated by the respondent and his mother cannot be called petty bickerings which can be described as normal wear and tear of married life. Consistent misbehaviour with threats to commit suicide would certainly amount to mental cruelty. As stated by the Supreme Court in **A. Jaychandra's case (supra)** proof beyond reasonable doubt is not what is required in matrimonial disputes. On the basis of the evidence on record, we are convinced that the appellant's behaviour has caused severe emotional disturbance in the respondent's life. It has made it impossible for him to cohabit with the appellant. The appellant has admitted that there

is no conjugal relationship between the two from July, 1999. The marriage has irretrievably broken down. Though that by itself is not a ground for dissolution of marriage, it is one of the circumstances which is to be borne in mind while assessing the evidence. Taking an overall view of the matter, we feel that the marital tie has rightly been snapped.

31. In these circumstances, in our opinion, no interference is necessary with the impugned judgment and order. The appeal is, therefore, liable to be dismissed and is dismissed as such.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)